

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 8, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawai'i

Forfeiture of General Lease No. 3160, Patricia Susan Nielsen, Lessee, Waiakea,
South Hilo, Hawaii, Tax Map Key: 2-1-07:26.

PURPOSE:

Forfeiture of General Lease No. 3160, Patricia Susan Nielsen, Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Lot 27, Ocean View Lease Lots situated at Waiakea,
South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-1-07:26, as shown on the attached
map labeled Exhibit A.

AREA:

7,546 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Residential purposes.

TERM OF LEASE:

Original lease was for 21 years commencing on November 18, 1946 and expiring on
November 17, 1967.

Extension of lease dated February 26, 1968 extended the term changing the expiration
of lease to March 14, 2015.

ANNUAL RENTAL:

\$4,000.00 due in semi-annual payments.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease 3160, Patricia Susan Nielsen, Lessee, was served a Notice of Default by certified mail dated October 15, 2009 for:

☒ **Failure to keep lease rental payments current**

☐ Failure to post required performance bond

☐ Failure to post required fire insurance policy

☐ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on October 23, 2009, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on November 23, 2009. As of December 15, 2009, this breach has not been cured.

As of December 15, 2009, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of \$7,020.00 covering the period from November 18, 2007 through November 17, 2009.

INSURANCE: This lease has no provision for property or liability insurance.

PERFORMANCE BOND:

This lease has no provision for a performance bond.

BACKGROUND:

General Lease No. 3160 was sold at public auction on 8/29/1946 to Adam C. Baker for a term of twenty-one (21) years for residential purpose. The Lessee Adam C. Baker passed away in 1948 leaving the lease property to his children as heirs.

At its meeting of January 29, 1965 under agenda item F-1-g, the Board consented to the assignment of lease from Henry Hall Baker, Maryann Baker Walton, Adam Charles Baker, Jr., Marguerite Luka Frazer, (heirs of Adam C. Baker, deceased) as Assignors to Henry Hall Baker, Maryann Baker Walton, Adam Charles Baker, Jr., Marguerite Luka Frazer, Edward Tamatoa Baker and Aimoku Baker Hargreaves, as Assignee.

On February 26, 1968, the Lessees qualified as a disaster victim under Section 103A-87, Revised Laws of Hawaii 1955, as amended, by the Board of Land and Natural Resources. The lease was subsequently extended for a period of fifty-three (53) years effective August 29, 1962, terminating on March 14, 2015 with rent reopening twenty (20)

and forty (40) years from the most current lease agreement. The last rental reopening was on November 17, 2007 for the remaining term of the lease.

Sometime between 1972 and 1973, the structure on the property was either demolished or destroyed by fire. No attempts to rebuild any structure were made.

At its meeting of October 11, 1974 under agenda item F-1, the Board consented to the assignment of lease from Henry Hall Baker, Marguerite Luka Frazer, Aimoku Baker Hargreaves and Vera F. Baker, Executrix of the Estate of Edward Tamatoa Baker, as Assignors to Maryann Baker Walton and Adam Charles Baker, Jr., as Assignees.

Further at its meeting of January 11, 1980 under agenda item F-1-a, the Board consented to the assignment of lease from Maryann Baker Walton and Adam Charles Baker, Jr. as Assignor to Patricia Susan Nielsen, as Assignee. The property was sold as is with no structure on it.

Ms. Nielsen was aware at the time of the assignment that the property was vacant and that because of the County of Hawaii zoning (MG-1 General Industrial) there was little or no chance to replace the house. As the lease was sold at public auction for residential purposes, the use is restricted to residential purpose only.

In a letter to the attorney representing the Lessee, the Chairman of the Board of Land and Natural Resources referenced an opinion from the Office of the Attorney General dated June 21, 1979 that the terms and conditions of the original lease cannot be amended as it was sold through the public auction process and further recommended that the lease be mutually terminated and be disposed of by public auction with a higher use conforming with the County's master plan.

A letter dated May 7, 2007 was sent to the Lessee apprising her of the new rent for the remaining term of the lease. The fair market rent was determined to be \$11,200.00 per annum. This represented an increase from the previous rental amount of \$980.00 per annum.

The Lessee rejected the new amount and after further discussion, the arbitration process was initiated according to §171-17(d) of the Hawaii Revised Statutes.

Ultimately, The arbitration panel determined the new annual rent for GL No. 3160 to be \$4,000.00 per annum for the 7.3-year period commencing November 18, 2007 to March 14, 2015.

On June 3, 2009, a letter from the Land Division was sent to the Lessee notifying her of the new rent. Although the Lessee has agreed to the renegotiated rental amount, no payment of rent has been received.

Due to the uncured default, staff is recommending the Board cancel General Lease No. 3160 and authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. 3160 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. 3160 to be applied to any past due amounts;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of January 8, 2010, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. 3160 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Gordon C. Heit
Land Agent



APPROVED FOR SUBMITTAL:

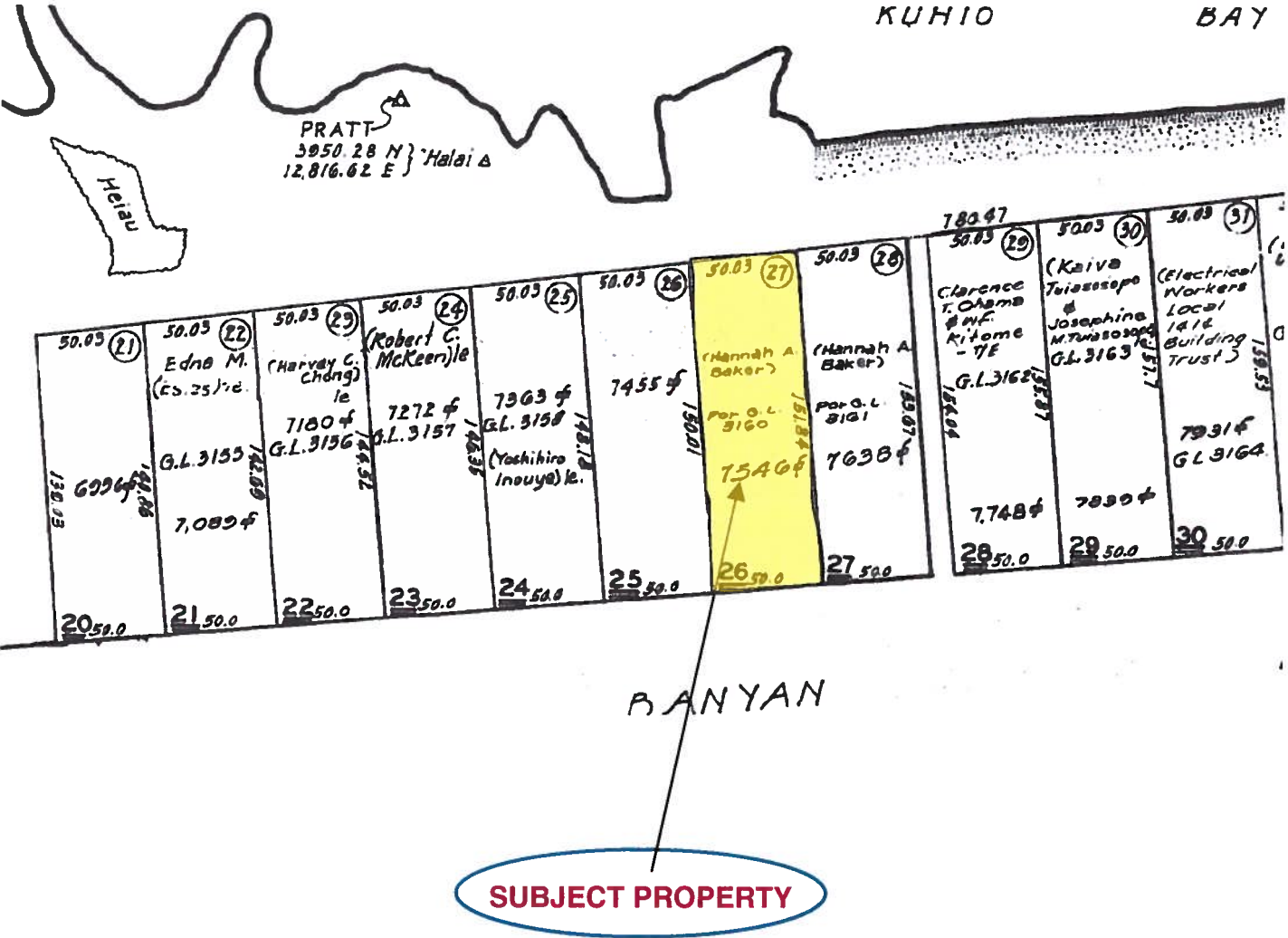


Laura H. Thielen, Chairperson



EXHIBIT A

TMK: 3RD/2-1-07:26



GL 3160

EXHIBIT A

